IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.108 OF 2006

Smt.Chhaya Bala Gaimukhe .. Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents.

Shri.R.B.Thakare and Shri.A.M.Chimalkar for the petitioner.

Mrs.A.S.Pai, A.P.P. for the State.

CORAM: B.H. MARLAPALLE &
N.H. PATIL, JJ.

October 16, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This petition is filed under Article 226 read with Articles 14, 19 and 21 of the Constitution of India. The detention order dated 19/11/2005 passed by the Commissioner of Police, Brihan Mumbai under section 3 (2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981 (for short "the MPDA Act") has been challenged and the petition has been filed by the wife of the detenu. The detenu was also furnished with the grounds for detention as

required under Section 8 of the MPDA Act.

2. The detention order is passed on the basis of one C.R. No.89 of 2005 registered with Wadala Police Station for the offences punishable under Sections 143, 147, 148, 149, 324, 307 and 353 of I.P.C. and two in-camera statements i.e. witness "A" recorded on 07/10/2005 and witness "B" recorded on 08/10/2005. The order has been served on the detenu on 20/11/2005 and he was taken in custody. It has been approved on 24/11/2005 as required under section 3 (a) of the MPDA Act. The Advisory Board heard the petitioner on 23/12/2005 and it submitted its opinion to the State Govt. on 28/12/2005. Consequently, the detenu submitted his representation against the order of detention on 10/12/2005 and by a communication dated 26/12/2005, he was informed that the said representation came to rejected by the State Govt.

3. The detention order has been challenged mainly on the following grounds : -

A) In the C.R. registered against the detenu i.e. C.R.No.89 of 2005, there was no case even prima facie

to hold that he was a dangerous person causing breach to the maintenance of law and order and therefore he is required to be kept under detention so as to prevent such activities in future.

B) The involvement of the detenu in the complaint registered at C.R.No.89 of 2005 was vague, by way of passing reference and in any case, no specific role was alleged against him so that the Detaining Authority was justified in coming to an opinion that he was a dangerous person required to be taken under preventive detention.

C) In the incident that resulted in C.R.No.89 of 2005 as well as in C.R.No.91 of 2005 (counter complaint) with the Wadala Police Station, two police personnel were injured and therefore the detention order was passed with mala fide intentions.

D) So far as the in-camera statements are concerned, they were recorded inordinately late and could not be relied upon. The verification made by the A.C.P. did not meet the requirements of law and if these in-camera statements are discarded from

considerations, nothing would remain against the detenu to call him a dangerous person within the meaning of section 2 (b-1) of the MPDA Act. By placing reliance on the decision of this Court in the case of Vidyadhar H. Varma vs. R.H.Mendonca, Commissioner of Police & Ors. **[2000 (7) LJSOFT 86]**, it was submitted by Mr.Thakare that the A.C.P. while verifying the statement of witness "A" ought to have made a discreet enquiry with the servant of the witness who was allegedly present when the incident had taken place and which was part of the said in-camera statement and in the absence of such incident, confidential departmental enquiry and the verification made by the A.C.P. in respect of both these in camera witnesses, does not meet the requirements of law and therefore they have to be discarded. Consequently, there would not be any ground to hold that the detenu is a dangerous person as defined under section 2 (b-1) of the MPDA Act. Mr.Thakare also submitted that the decision of this Court in the case of Austin William Luis Pinto vs. Commissioner of Police, Greater Mumbai & Ors. **[2005 (2) LJSOFT 51]** supports the detenu's challenge on the ground of law in recording the in-camera statements,

which were recorded after the detenu was released on bail by the learned Ad-hoc Addl. Sessions Judge on 21/09/2005.

4. As far as C.R.No.89 of 2005 is concerned and as has been set out in the reasons for the detention order being passed, the first instance is that of 22/08/2005 at about 22.00 hrs. It is alleged that the detenu and his associates Manoj Sansare, Bala Shetty and Bhagwan Bhaurao Sable dismantled Chinese stall of Shri.Nagsen Kadam and forced him to close the business. The detenu's associate Manoj Sansare threatened him with dire consequences if he started the Chinese stall again. On 23/08/2005, the complainant made an application against the detenu and his associates with Wadala Police Station. On 24/08/2005 at about 22.00 hrs., when the complainant and his cousin were sitting at Buddha Vihar at Wadala, there was some altercation between the parties and on the issue of dismantling of the Chinese stall and there was an assault on two persons. At about 23.45 hrs., the complainant was waiting at the Wadala police station for arrival of his brothers, the detenu and his associates rushed to the Police Station, entered

the Police Station with a crowd of 50 to 60 others and it was free for all when the police managed to control the crowd outside the police station. It is alleged that the detenu hit on the head of Shri.Ganesh Yadav Turukmare by a blunt object and threatened the members of the public not to intervene or to help any one of the complainants. As a counter blast, on the complaint of Rajesh Sansare C.R.No.90 of 2005 for the offences punishable under Sections 143, 147 and 324 of I.P.C. was also registered. This material as been furnished in the reasons for the detention order, indicates the involvement of the detenu in C.R.No.89 of 2005 and we do not accept the submissions made that he had no involvement in the incident or any incident resulting into the filing of C.R.No.89 of 2005 or the complaint filed on 23/08/2005 at the Wadala police station.

5. The proposal for detention was submitted on 12/02/2005 and though the detenu was released on bail on 21/09/2005, it was a conditional order of bail. An application came to be filed before the 7th Ad-hoc Addl. Sessions Judge on behalf of the detenu for modification of the bail order on 28/09/2005. On

07/10/2005, the police filed their reply to the said application and by the order dated 14/09/2005, the Court ordered that the detenu should give attendance to the Wadala police station on each Sunday between the timings fixed either in the morning or in the evening. Therefore, it cannot be said that the submission of the proposal made on 12/10/2005 is related or is only by way of after thought or on the ground of malice because two police persons were suspended in the accident that had taken place in the Wadala police station.

On the issue of recording of in-camera statements as noted earlier, the first statement was recorded on 07/10/2005 and the second one was recorded on 08/10/2005. Witness "A" had stated about the incident that had taken place in the second week of August, 2005 and witness "B" had stated the incident that had taken place in the fourth week of August, 2005. The incidents yielding to C.R.No.89 of 2005 started from 22/08/2005 and the detenu was released on bail on 21/09/2005. From August, 2005 till October, 2005, when the proposal was submitted (on 12/10/2005), the chain of events was continuous and there was no

occasion to believe that the propensity or the potentiality between the incidents and the date of the impugned order of detention was snapped.

6. On the issue of verification of the in-camera statements, we have perused the judgement in the case of Vidyadhar H. Varma vs.R.H.Mendonca, Commissioner of Police & Ors. (Supra). In the said case, the verification made by the A.C.P. on the in-camera statement read thus : -

> "The witness was produced before me. The statement given by him on 12-2-1999 was shown to him and was read over to him. The witness stated that the statement bears his signature and the contents of the statement were correct."

In the instant case, the verification was made by the A.C.P. on both the in-camera statements. In respect of Witnesses "A", it reads as under : -

> "Today on 10/10/2005 witness "A" is present before me. I have read over the statement to

him and explained the contents of the said statement and he admits that the said statement is recorded as per his say. The witness also admits that he has signed the said statement. I made further enquiries with the said witness to which he disclosed his identity and also disclosed his fear about the detenu I have verified the same and I am convinced that the same is true.

I have taken due care of not disclosing the name, identity and the address of the said witness."

In respect of Witness "B" it reads as under:-

"Today on 10/10/2005 witness "B" is present before me. I have read over the statement to him and explained the contents of the said statement and he admits that the said statement is recorded as per his say. The witness also admits that he has signed the said statement. I made further enquiries with the said witness to which he disclosed his

identity and also disclosed his fear about the detenu I have verified the same and I am convinced that the same is true.

I have taken due care of not disclosing the name, identity and the address of the said witness."

7. Mr.Thakare, the learned counsel relied upon the observations made by this Court in Varma's case (Supra) in Para 15 and Para 17. The observations made by this Court in para 18 in the said case read as under : -

"18. In the light of the above observation of the Supreme Court, this court will have to scrutinize very closely the in-camera statements, particularly when it constitutes the only foundation of arriving at subjective satisfaction of detaining authority keeping in mind the social consequences that has been highlighted in the observations of the Supreme Court cited above. In this case, the A.C.P. in his verification stated that witnesses

produced before him and found that what was stated by the witness was correct. A.C.P. did not say that the allegations contained in in-camera statements verified by him through an independent and confidential enquiry. A.C.P. did not even prima facie make an enquiry about the veracity of the allegation of the witness. In order to inspire confidence and to act upon in-camera statements, proper mechanism for check and balances has to be provided and through such machinery in-camera statements got to be verified by at least a competent and responsible officer who is superior to the Sponsoring Authority. Unless court is satisfied that such safeguards against misuse of power is provided, it is not at all safe for the Court to rely upon in-camera statements which forms only basis for subjective satisfaction for the detaining authority. We hasten to add that we should not be misunderstood that we are suggesting a machinery or procedure to ensure that in-camera statements are generally made. It

is for the police department to find out a machinery and method to ensure the credibility of the in-camera statements; to see that those statements are generally made and can be formed a foundation for arriving at the subjective satisfaction of the detaining authority; we make no bones that the in-camera statement inspire no confidence and it should have been looked upon as the sole basis of the detention of the detenu in this case. For these reasons we are of the view that the detention order suffers from lack of proper materials. Therefore, though we cannot accept the points raised by the learned counsel for the petitioner, for the reasons stated above, in Para 14 to 18 this writ petition is to succeed."

8. In our opinion, the observations made in Varma's case would not affect or vitiate the detention order under challenge in this petition. In the case of Anil Dattu Pawar Vs. Shri.Himanshu Roy, Commissioner of Police, Nashik & Ors. **[2005 ALL MR (Cri) 2144]**, a Division Bench of this Court referred

to Varma's case (Supra) and observed as under : -

"The Division Bench of this Court in Shri.Vidyadhar H. Varma's case (supra) had undoubtedly refused to rely upon the in-camera statements in the said case on the ground that the veracity and genuineness thereof was not properly ensured by counter checking by a superior authority through an independent confidential departmental enquiry. At the same time, it is to be noted that in the said case the subjective satisfaction of the detaining authority was solely based on the in-camera statements and there was no other material relied upon in support of the order of detention, and in those facts the Division Bench had refused to rely upon the in-camera statements in the absence of proper steps being taken to ensure the veracity and genuineness of those statements. Besides, the Division Bench had clearly observed that "we should not be misunderstood that we are suggesting a machinery or procedure to ensure that in-camera statements are generally made." Obviously therefore, the Division Bench has not laid down any law as regards the procedure to be followed for the purpose of ensuring the veracity or the genuineness of the

in-camera statements. Once the in-camera statement apparently discloses proper verification regarding the truthfulness of such statement and the identity of the person to the satisfaction of the officer verifying the statement, certainly no fault can be found with the verification and therefore the challenge on the ground of defective verification does not survive."

9. In addition, in the case of Sachin Sudhakar Nikam V/s. A.N.Roy, Commissioner of Police & Ors. **[2005 ALL MR (Cri) 1684]**, another Division Bench of this Court on the issue of independent enquiry to be made on the in-camera statements being truthful observed : -

> "The very object of recording in-camera statements is to keep the identity and address of the witnesses confidential or secret as the witnesses are scared of the filing complaints or of giving evidence against the criminal due to the terror unleashed by him. The witnesses came forward to give statement only because the assurance was given by the Police that their names and addresses will be kept

secret."

10. We are, therefore, not impressed by this argument of Mr.Thakare that with the help of the servant of witness "A", an enquiry was required to be made by the A.C.P. so as to satisfy the requirements of law on the issue of verification of the said in-camera statements. The in-camera statements as referred hereinabove and as made by the A.C.P., in our opinion satisfy all the requirements of law and more particularly the A.C.P. being satisfied on the truthfulness of the incidents. If the contentions of Mr.Thakare are accepted, the enquiry would not remain in-camera anymore.

11. In the case of The Attorney General for India V/s. Amratlal Prajivandas (supra), it has been held that even one incident will be sufficient to invoke the provisions of preventive detention. In the case of Smt.Phulwari Pathak V/s. Shri.R.H.Mendonca, **2000 ALL MR (Cri.) 1503 (S.C.)**, it has been held that the in-camera statement can be relied upon by the detaining authority for passing an order of detention under the MPDA Act on the ground that the detenu is a

dangerous person under section 2(b-1) of the said Act. In Para 16 of the said judgement Their Lordships observed as under : -

> "Then comes the crucial question whether 'in-camera' statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Out attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under section 3 of the Act. Preventive detention measure is harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned has committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining

authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted."

12. No doubt in the instant case, in-camera statements have been recorded after the detenu was released on bail but during the time when the application for modification of the bail order was pending. In the case of Zebunisa Abdul Majid V/s. M.N.Singh and others **[2001 (3) Mh.L.J. 365]**, a similar contention was raised before yet another Division Bench of this Court. In-camera statements were recorded after the detenu was released on bail and by relying upon the decision in the case of Pradeep Nilkanth Paturkar vs. S. Ramamurthi & ors.

[AIR 1994 SC 656], it was submitted that the in-camera statements were recorded long after the detenu was released on bail. The Division Bench in Zebunisa Abdul Majid's case (Supra) rejected the contentions in the following words : -

> "Secondly in our opinion, the Supreme Court has not laid down that in all cases where statements are recorded after the detenu is released on bail they should be viewed with suspicion. The observation of the Supreme Court are in the context of delay in issuing the detention order and are confined to the facts of that case. In any event this aspect of the matter was clearly evident from record which was before the detaining authority. After considering all aspects of the matter in their proper perspective the detaining authority has expressly stated in the affidavit that he was satisfied about the truthfulness of the said statements. Such satisfaction cannot be questioned. This submission of Mr.Chitnis must therefore, fail."

13. In the instant case, at the first place, we are satisfied that there is no inordinate delay in recording in-camera statements on 07/10/2005 and on 08/10/2005 and the detaining authority has recorded the satisfaction about the truthfulness of the incidents as set out in both these statements. Even the statements as they are, to the exclusion of the C.R.No.89 of 2005, make out a case of a dangerous person within the meaning of Section 2 (b-1) of the MPDA Act and therefore the Detaining Authority was justified in issuing the impugned order so as to prevent the detenu from further indulging in such unlawful and terror acts, disturbing the public order.

14. We are therefore satisfied that the challenge to the impugned order fails on all grounds. In the result, the petition is dismiseed and Rule discharged.

(N.H. Patil, J.) **(B.H. Marlapalle,J.)**